

ORIGINAL
OPEN MEETING



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**MEMORANDUM
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Arizona Corporation Commission ^{410A}
DOCKETED

TO: THE COMMISSION

2008 MAR 19 P 12: 29

FROM: Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

MAR 19 2008

DATE: March 19, 2008

DOCKETED BY	<i>nr</i>
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RE: **AMENDED** - IN THE MATTER OF THE APPLICATION OF AMERICATEL CORPORATION AND STARTEC GLOBAL OPERATING COMPANY FOR APPROVAL OF A PRO FORMA RESTRUCTURING AND OTHER RELATED APPROVALS (DOCKET NOS. T-03517A-07-0633 AND T-20522A-07-0633)

On November 11, 2007, Americatel Corporation ("Americatel") and Startec Global Operating Company ("Startec") (collectively, "Applicants"), pursuant to Arizona Revised Statutes §40-285,¹ requested approval from the Commission of a *pro forma*² corporate restructuring involving the merger of the Applicants, with Americatel as the surviving entity.

The Applicants requested that the Commission act expeditiously to grant the requested approval before March 31, 2008 so that the Applicants may timely meet important business objectives. The primary objective is to simplify duplicative administrative processes, including regulatory filings around the country, that are caused by operating two entities that provide essentially the same services. Consolidating the entities at the end of a quarter is a less complicated way to complete the merger and, if the merger is completed by the end of the first quarter 2008, the companies will not need to make duplicative filings during the second quarter of 2008. The Applicants further request that the Commission grant a waiver of the applicable provisions of the Commission's Slamming Rules (Arizona Administrative Code R14-2-1901 through R14-2-1913). In addition, the Applicants request the cancellation of Startec's Certificate of Convenience and Necessity ("CC&N")

In Decision No. 69573, Startec received authority to provide resold long distance in Arizona as a result of corporate restructuring that was approved by the Commission on May 21, 2007 in Docket No. T-20522A-07-0161. In that Docket, all of the assets, including the CC&N granted to Startec Global Licensing Company in Decision No. 63370, were transferred to Startec. Startec is a wholly owned direct subsidiary of Startec Global Communications Corporation ("SGCC").

¹ Neither Americatel nor Startec is a Class A Utility and, therefore, the Public Utility Holding Companies and Affiliated Interests rules, A.A.C. R14-2-801 to R14-2-806 et seq. do not apply.

² The Applicants term "*pro forma*" because there is no change in the ultimate control of the proposed merged entities. In addition, the term "*pro forma*" is used because the proposed transaction qualifies for streamlined treatment at the Federal Communication Commission as a *pro forma* transfer of customers.

Startec currently has approximately 2000 subscribers in Arizona. Startec provides long distance, Internet, and other communications services to persons and businesses residing in the United States (with the exception of Alaska and the District of Columbia) as well as Canada.³

In Decision No. 61054, dated August 6, 1998, Americatel received a CC&N to provide resold long distance telecommunications in Arizona. Americatel provides telecommunications services to customers that have a need to make calls to Latin America and the Caribbean. It provides international and domestic facilities-based and resold long distance services, including "dial around" casual calling (*i.e.*, 1010XXX) service and presubscribed 1+ calling services in each of the 48 contiguous states.

According to the Application, Platinum Equity, LLC ("Platinum Equity") a limited liability company currently holds its interest in Americatel through its wholly-owned subsidiary, MTAC Holding Corporation a Delaware corporation, which in turn, is a wholly owned subsidiary of EnergyTRACS Acquisition Corporation ("EnergyTRACS") a Delaware corporation which is in turn, is a wholly-owned subsidiary of Platinum Equity. Platinum Equity acquired indirect control of Startec on July 12, 2007, when it acquired indirect ownership of 100 percent of the equity in Startec. Platinum Equity currently holds this interest through its wholly-owned subsidiary SGCC which in turn, is a wholly owned subsidiary EnergyTRACS.

On December 31, 2007, SGCC and selected subsidiaries, including Startec, were transferred to Americatel. As a result, Platinum Equity now holds its interest in Startec indirectly through Americatel and requests approval to merge Startec in to Americatel. The Applicants state that, as a result of the merger, Startec and SGCC, Startec's immediate parent and holding company, will be merged with and into Americatel. Startec and SGCC will cease to exist. Americatel will become the operating telecommunications service provider in Arizona. It will provide service to Americatel and Startec customers.

Americatel states that it will provide telecommunications services to customers using the same network; billing systems; and customer service operations currently used by Startec and that no existing service will be discontinued, reduced, or impaired as a result of the proposed *pro forma* merger. Americatel further states that it will serve Startec's customers using the same rates, terms, and conditions that currently apply under Startec. Americatel also states that it intends to adopt those portion of Startec's tariff relating to Startec's service offerings and will file a revised tariff after consummation of the proposed transaction or as directed by the Commission.

According to the Applicants, the approval of the proposed *pro forma* merger serves the public interest by streamlining and eliminating inefficiencies from the business and administrative operations of Startec and Americatel, strengthening competition in Arizona and bringing more of the well-recognized benefits of vigorous competition to telecommunications customers throughout Arizona. In addition, the Applicants assert that the proposed transaction will benefit customers by

³Startec does not provide service in Alaska or the District of Columbia.

permitting Americatel to integrate Startec's assets into its own services to create new, "best of class" offerings to ensure that the benefits Startec's customers currently enjoy remain available to them and also may become available to Americatel's existing customers.

A copy of the notice sent to Startec's customers is included as Exhibit B in the Application. The Applicants notified all of Startec's customers in Arizona of the proposed merger on November 7, 2007. The notice informed the customers that they will have access to alternative interexchange service providers and that they have the right to select a different long distance carrier if they choose not to remain with Startec.

On December 6, 2007, the Applicants filed a Notice of Filing Affidavit of Publication. Notice of the Application was published in The Arizona Republic on November 23, 2007. In response to Staff Data Request JFB1-2, Startec stated that it currently does not and has never collected advances, deposits, or prepayments from its Arizona customers.

Startec's CC&N should be cancelled if the proposed merger is approved by the Commission. The Applicants have complied with the requirements established in A.A.C. R14-2-1107.

The Consumer Services Section of the Utilities Division has reported that from January 1, 2004 through December 26, 2007 there were no complaints, inquiries, and/or opinions filed against Americatel or Startec. The Compliance Section of the Utilities Division has reported that there are no delinquencies and/or Compliance concerns for either Americatel or Startec.

Staff recommends:


- A. that the Commission approve the Applicants' request to merge Startec into Americatel,
- B. that the Commission grant the Applicants a waiver of its slamming rules,
- C. that Startec's CC&N be cancelled. Upon cancellation of the CC&N, Startec will not be authorized to provide resold long distance services in Arizona and therefore, will not be subject to the requirements of Decision No. 69573, and
- D. that Americatel submit revisions to its tariff to adopt those portions of Startec's tariffs relating to Startec's service offerings within 30 days of the Commission's Decision in this matter.
- E. that Americatel file verification that the merger has been completed with Docket Control within 30 days following the merger date proposed in this transaction.

THE COMMISSION

March 19, 2008

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- F. that for one year following the merger close, or until Americatel informs the Commission by filing an affidavit with Docket Control, as a compliance item in this docket, that merger-related activities are completed, whichever comes last.

for 

Ernest G. Johnson
Director
Utilities Division

EGJ:JFB:lhmlMAS

ORIGINATOR: John Bostwick

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 MIKE GLEASON
 Chairman

3 WILLIAM A. MUNDELL
 Commissioner

4 JEFF HATCH MILLER
 Commissioner

5 KRISTIN K. MAYES
 Commissioner

6 GARY PIERCE
 Commissioner

7
8 IN THE MATTER OF THE APPLICATION
9 OF AMERICATEL CORPORATION AND
10 STARTEC GLOBAL OPERATING
11 COMPANY FOR APPROVAL OF A PRO
12 FORMA RESTRUCTURING AND OTHER
13 RELATED APPROVALS

DOCKET NOS. T-03517A-07-0633
 T-20522A-07-0633

DECISION NO. _____

ORDER

14 Open Meeting
15 March 27, 2008
16 Phoenix, Arizona

BY THE COMMISSION:

17 FINDINGS OF FACT

18 1. On November 11, 2007, Americatel Corporation ("Americatel") and Startec Global
19 Operating Company ("Startec") (collectively, "Applicants"), pursuant to Arizona Revised Statutes
20 §40-285,¹ requested approval from the Commission of a *pro forma*² corporate restructuring
21 involving the merger of the Applicants, with Americatel as the surviving entity. The Applicants
22 respectfully request that the Commission act expeditiously to grant the approval requested before
23 March 31, 2008 so that the Applicants may timely meet important business objectives. The
24 primary objective is to simplify duplicative administrative processes, including regulatory filings

25 _____
26 ¹ Neither Americatel nor Startec is a Class A Utility and, therefore, the Public Utility Holding Companies and
27 Affiliated Interests rules, A.A.C. R14-2-801 to R14-2-806 et seq. do not apply.

28 ² The Applicants term "*pro forma*" because there is no change in the ultimate control of the proposed merged
entITIES. In addition, the term "*pro forma*" is used because the proposed transaction qualifies for streamlined treatment
at the Federal Communication Commission as a *pro forma* transfer of customers.

1 around the country, that are caused by operating two entities that provide essentially the same
2 services. Consolidating the entities at the end of a quarter is a less complicated way to complete
3 the merger and, if the merger is completed by the end of the first quarter 2008, the companies will
4 not need to make duplicative filings during the second quarter of 2008. The Applicants further
5 request that the Commission grant a waiver of the applicable provisions of the Commission's
6 Slamming Rules Arizona Administrative Code ("A.A.C.") R14-2-1901 through R14-2-1913. In
7 addition, the Applicants request the cancellation of Startec's Certificate of Convenience and
8 Necessity ("CC&N")

9 2. In Decision No. 69573, Startec received authority to provide resold long distance in
10 Arizona as a result of a corporate restructuring that was approved by the Commission on May 21,
11 2007 in Docket No. T-20522A-07-0161. In that Docket, all of the assets, including the CC&N
12 granted to Startec Global Licensing Company in Decision No. 63370, were transferred to Startec.
13 Startec is a wholly owned direct subsidiary of Startec Global Communications Corporation
14 ("SGCC").

15 3. Startec currently has approximately 2000 subscribers in Arizona. Startec provides
16 long distance, Internet, and other communications services to persons and businesses residing in
17 the United States (with the exception of Alaska and the District of Columbia) as well as Canada.

18 4. In Decision No. 61054, dated August 6, 1998, Americatel received a CC&N to
19 provide resold long distance telecommunications in Arizona. Americatel provides
20 telecommunications services to customers that have a need to make calls to Latin America and the
21 Caribbean. It provides international and domestic facilities-based and resold long distance
22 services, including "dial around" casual calling (*i.e.*, 1010XXX) service and presubscribed 1+
23 calling services in each of the 48 contiguous states.

24 5. According to the Application, Platinum Equity, LLC ("Platinum Equity") a limited
25 liability company currently holds its interest in Americatel through its wholly-owned subsidiary,
26 MTAC Holding Corporation a Delaware corporation, which in turn, is a wholly owned subsidiary
27 of EnergyTRACS Acquisition Corporation ("EnergyTRACS") a Delaware corporation which is in
28 turn, is a wholly-owned subsidiary of Platinum Equity. Platinum Equity acquired indirect control

1 of Startec on July 12, 2007, when it acquired indirect ownership of 100 percent of the equity in
2 Startec. Platinum Equity currently holds this interest through its wholly-owned subsidiary SGCC
3 which in turn, is a wholly owned subsidiary EnergyTRACS.

4 6. On December 31, 2007, SGCC and selected subsidiaries, including Startec, were
5 transferred to Americatel. As a result, Platinum Equity now holds its interest in Startec indirectly
6 through Americatel and requests approval to merge Startec in to Americatel.

7 7. The Applicants state that, as a result of the merger, Startec and SGCC, Startec's
8 immediate parent and holding company, will be merged with and into Americatel. Startec and
9 SGCC will cease to exist. Americatel will become the operating telecommunications service
10 provider in Arizona. It will provide service to Americatel and Startec customers.

11 8. Americatel states that it will provide telecommunications services to customers
12 using the same network; billing systems; and customer service operations currently used by Startec
13 and that no existing service will be discontinued, reduced, or impaired as a result of the proposed
14 *pro forma* merger. Americatel further states that it will serve Startec's customers using the same
15 rates, terms, and conditions that currently apply under Startec. Americatel also states that it
16 intends to adopt those portion of Startec's tariff relating to Startec's service offerings and will file
17 a revised tariff after consummation of the proposed transaction or as directed by the Commission.

18 9. According to the Applicants, the approval of the proposed *pro forma* merger serves
19 the public interest by streamlining and eliminating inefficiencies from the business and
20 administrative operations of Startec and Americatel, strengthening competition in Arizona and
21 bringing more of the well-recognized benefits of vigorous competition to telecommunications
22 customers throughout Arizona. In addition, the Applicants assert that the proposed transaction will
23 benefit customers by permitting Americatel to integrate Startec's assets into it own services to
24 create new, "best of class" offerings to ensure that the benefits Startec's customers currently enjoy
25 remain available to them and also may become available to Americatel's existing customers.

26 10. A copy of the notice sent to Startec's customers is included as Exhibit B in the
27 Application. The Applicants notified all of Startec's customers in Arizona of the proposed merger
28 on November 7, 2007. The notice informed the customers that they will access to alternative

1 interexchange service providers and that they have the right to select a different long distance
2 carrier if they choose not to remain with Startec.

3 11. On December 6, 2007, the Applicants filed a Notice of Filing Affidavit of
4 Publication. Notice of the Application was published in The Arizona Republic on November 23,
5 2007.

6 12. In response to Staff Data Request JFB1-2, Startec stated that it currently does not
7 and has never collected advances, deposits, or prepayments from its Arizona customers.

8 13. Startec's CC&N should be cancelled if the proposed merger is approved by the
9 Commission. The Applicants have complied with the requirements established in A.A.C. R14-2-
10 1107.

11 14. The Consumer Services Section of the Utilities Division has reported that from
12 January 1, 2004 through December 26, 2007 there were no complaints, inquiries, and/or opinions
13 filed against Americatel or Startec.

14 15. The Compliance Section of the Utilities Division has reported that there are no
15 delinquencies and/or Compliance concerns for either Americatel or Startec.

16 16. Staff has recommended:

- 17 a. that the Commission approve the Applicants' request to merge Startec
18 into Americatel,
- 19 b. that the Commission grant the Applicants a waiver of its slamming
20 rules,
- 21 c. that Startec's CC&N be cancelled. Upon cancellation of the CC&N,
22 Startec will not be authorized to provide resold long distance services
23 in Arizona and therefore, will not be subject to the requirements of
24 Decision No. 69573, and
- 25 d. that Americatel submit revisions to its tariff to adopt those portions of
26 Startec's tariffs relating to Startec's service offerings within 30 days of
27 the Commission's Decision in this matter.
- 28 e. that Americatel file verification that the merger has been completed
with Docket Control within 30 days following the merger date
proposed in this transaction.
- f. that for one year following the merger close, or until Americatel
informs the Commission by filing an affidavit with Docket Control, as
a compliance item in this docket, that merger-related activities are
completed, whichever comes last.

Decision No. _____

CONCLUSIONS OF LAW

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2 1. Americatel and Startec are Arizona public service corporations within the meaning
3 of Article XV, Section 2 of the Arizona Constitution.

4 2. The Commission has jurisdiction over Americatel and Startec and over the subject
5 matter of the Application.

6 3. The Commission, having reviewed the Application and Staff's Memorandum dated
7 March 6, 2008, and as amended on March 19, 2008, concludes the Applicant's request for
8 approval of a *pro forma* corporate restructuring is reasonable, fair and equitable, and is therefore in
9 the public interest.

ORDER

10
11 IT IS THEREFORE ORDERED that the Applicants' request for Authority of a *pro forma*
12 corporate restructuring be and hereby is approved.

13 IT IS FURTHER ORDERED that the Applicants' request for a waiver in this matter of the
14 Commission's Slamming rules (A.A.C. R14-2-1901 through R14-2-1913) be and hereby is
15 granted.

16 IT IS FURTHER ORDERED that Startec's CC&N be and hereby is cancelled effective
17 upon the transfer of the final Startec customer to Americatel, the surviving entity of the merger.
18 Americatel shall inform the Commission of the date the last Startec customer was transferred to
19 Americatel within 90 days of a Decision in this matter. Upon cancellation of its CC&N, Startec
20 will not be authorized to provide resold long distance services in Arizona and will not be subject to
21 the requirements of Decision No. 69573.

22 IT IS FURTHER ORDERED that that Americatel submit revisions to its tariff to adopt
23 those portions of Startec's tariffs relating to Startec's service offerings within thirty days of a
24 Decision in this matter.

25 IT IS FURTHER ORDERED that Americatel file verification that the merger has been
26 completed with Docket Control within 30 days following the merger date proposed in this
27 transaction.

28 ...

1 IT IS FURTHER ORDERED that for one year following the merger close, or until
2 Americatel informs the Commission by filing an affidavit with Docket Control, as a compliance
3 item in this docket, that merger-related activities are completed, whichever comes last, Americatel
4 shall provide written notification to the Director of the Utilities Division and to the individual
5 members of the Commission 60 days prior to any planned merger-related Arizona workforce
6 layoffs; any planned merger-related Arizona plant closings; and any planned merger-related
7 Arizona facility closings.

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1 IT IS FURTHER ORDERED that if the surviving merged entity or its affiliated companies
2 decide to conduct layoffs or facility closings in Arizona attributable to the merger, they shall file a
3 report with the Commission within two months of the effective date of the layoffs or closings
4 stating why such layoffs and/or closings were necessary, and what efforts the companies made, or
5 are making, to re-deploy the affected employees elsewhere in the surviving merged entity or its
6 affiliates. This report shall be filed for one year following merger close or until Americatel
7 informs the Commission by filing an affidavit with Docket Control that merger-related activities
8 are completed, whichever comes last.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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11 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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14 CHAIRMAN

COMMISSIONER

15
16 COMMISSIONER

COMMISSIONER

COMMISSIONER

17 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
18 Executive Director of the Arizona Corporation Commission,
19 have hereunto, set my hand and caused the official seal of
20 this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2008.

21
22
23 DEAN S. MILLER
Interim Executive Director

24
25 DISSENT: _____

26
27 DISSENT: _____

28 EGJ:JFB:lhM\MAS

Decision No. _____

1 SERVICE LIST FOR: Americatel Corporation and Startec Global Operating Company
2 Docket Nos. T-03517A-07-0633 and T-20522A-07-0161

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4 Lewis & Roca, LLP
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6 Mr. Ernest G. Johnson
7 Director, Utilities Division
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